

MARK J. BENNETT 2672
Attorney General of Hawaii

2008 MAR 20 AM 9:00

J. Gerard Lam 5326
Deputy Attorney General
Department of Attorney
General, State of Hawaii
Labor Division
425 Queen Street
Honolulu, Hawaii 96813
Telephone: 586-1450

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2007-24
)	(Inspection No. 310394655)
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	STIPULATION AND SETTLEMENT
)	AGREEMENT; EXHIBIT A; APPROVAL
Complainant,)	AND ORDER
)	
vs.)	
)	
DEPARTMENT OF WATER SUPPLY,)	
County of Hawaii,)	
)	
Respondent.)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS

("Director") and Respondent DEPARTMENT OF WATER SUPPLY, County of Hawaii

("Respondent"), having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about September 20, 2007, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 78-6717 Mamalahoa Highway, Holualoa, Hawaii 96725.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on October 23, 2007 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$1,875.00. *See Exhibit A.*

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 78-6717 Mamalahoa Highway, Holualoa, Hawaii 96725.

3 At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

Respondent agrees that it has or will abate each violation listed in the Citation, as amended below, in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.

4. Respondent shall submit the completed abatement certification to HIOSH no later than one week after this Stipulation and Settlement Agreement ("Agreement") has been

filed; failure to timely do so may result in additional penalties or follow up inspections.

5. The violations and corresponding characterizations as stated in the Citation are amended as follows:

- a. Citation 1 Item 1a is deleted; and
- b. Citation 1 Item 1b is deleted.

6. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

10. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

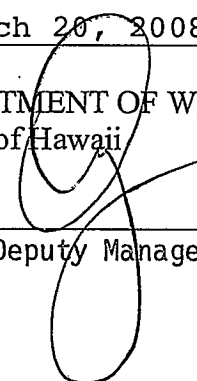
DATED: Honolulu, Hawaii, March 20, 2008.

APPROVED AS TO FORM:



KATHERINE A. GARSON
Deputy Corporation Counsel
County of Hawaii
Attorney for Respondent

DEPARTMENT OF WATER SUPPLY,
County of Hawaii

By: 
Its Deputy Manager

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



J. GERARD LAM
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii



DARWIN L.D. CHING

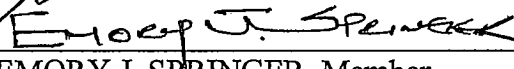
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 280

DATED: March 20, 2008



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

In Re Director, Department of Labor and Industrial Relations v. Department of Water Supply,
County of Hawaii, OSH No. 2007-24 (Inspection No. 310394655), Stipulation and Settlement
Agreement; Exhibit "A"; Approval And Order

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104

RECEIVED

2007 OCT 24 AM 10:21

DEPT. OF WATER SUPPLY
COUNTY OF HAWAII



Certified Number: 7006 2150 0004 4051 3970

Citation and Notification of Penalty

To:
County of Hawaii-Department of Water Supply
and its successors
78-6717 Mamalahoa Hwy
Holualoa, HI 96725

Inspection Number: 310394655 (Charles Clark)
Inspection Date(s): 09/20/2007 - 09/20/2007
Issuance Date: 10/23/2007
OSHC ID: X8851
Optional Report No.: 07607
Inspection Type: Planned
Scope of Inspection: Comprehensive Inspection

Inspection Site:
78-6717 Mamalahoa Hwy
Holualoa, HI 96725

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the date(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 10/23/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655

Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Holualoa, HI 96725

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1910.180(b)(2) [Refer to chapter 12-73.1, HAR] was violated because:

A National N65 truck mounted crane did not have a legible boom angle indicator which exposed employees to serious injuries in the event a lift were to exceed the crane's lifting capacities.

29 CFR 1910.180(b)(2) states "New and existing equipment. All new crawler, locomotive, and truck cranes constructed and utilized on or after August 31, 1971, shall meet the design specifications of the American National Standard Safety Code for Crawler, Locomotive, and Truck Cranes, ANSI B30.5-1968, which is incorporated by reference as specified in §§1910.6. Crawler, locomotive, and truck cranes constructed prior to August 31, 1971, should be modified to conform to those design specifications by February 15, 1972, unless it can be shown that the crane cannot feasibly or economically be altered and that the crane substantially complies with the requirements of this section."

Location: Establishment

Date By Which Violation Must be Abated:
Penalty:

11/26/2007
\$1,875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Holualoa, HI 96725

Citation 1 Item 1b Type of Violation: Serious

29 CFR 1910.180(c)(2) [Refer to chapter 12-73.1, HAR] was violated because:

A National N65 truck mounted crane did not have the load rating chart for different boom angles securely fixed in a location easily visible to the operator. The lack of a load chart exposed employees to serious injuries in the event a lift were to exceed the crane's lifting capacities.

29 CFR 1910.180(c)(2) states "Load rating chart. A substantial and durable rating chart with clearly legible letters and figures shall be provided with each crane and securely fixed to the crane cab in a location easily visible to the operator while seated at his control station."

Location: Establishment

Date By Which Violation Must be Abated:

11/26/2007

Citation 2 Item 1 Type of Violation: Other

HAR §12-60-2(b)(1)(A) was violated because:

A written Safety and Health program to identify, evaluate, and control workplace hazards was not available during the inspection.

§12-60-2(b)(1)(A) states "The employer shall institute and maintain an effective safety & health program to identify, evaluate and control workplace hazards. Employer safety & health programs which were developed prior to the promulgation of this standard may be used to satisfy this requirement so long as they meet this criteria for an acceptable program set forth in (B) below."

Location: Establishment

Date By Which Violation Must be Abated:

11/26/2007

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Holualoa, HI 96725

Citation 2 Item 2 Type of Violation: **Other**

HAR §12-60-2(b)(4)(B) was violated because:

The District Supervisor was not trained in his specific responsibilities under the written safety and health program.

§12-60-2(b)(4)(B) states "In addition, supervisors and managers shall be trained in the elements of the employer's safety and health program and in the specific responsibilities assigned to them under the program."

Location: Establishment

- Date By Which Violation Must be Abated:

11/26/2007

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Hualaloa, HI 96725

The alleged violations below (3a-3c) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 2 Item 3a Type of Violation: **Other**

29 CFR 1910.180(d)(3) [Refer to chapter 12-73.1, HAR] was violated because:

Frequent inspections of the required items on a Auto truck mounted crane #DWS-125 were not conducted.

29 CFR 1910.180(d)(3) states "Frequent inspection. Items such as the following shall be inspected for defects at intervals as defined in paragraph (d)(2)(i) of this section or as specifically indicated including observation during operation for any defects which might appear between regular inspections. Any deficiencies such as listed shall be carefully examined and determination made as to whether they constitute a safety hazard:

- (i) All control mechanisms for maladjustment interfering with proper operation: Daily.
- (ii) All control mechanisms for excessive wear of components and contamination by lubricants or other foreign matter.
- (iii) All safety devices for malfunction.
- (iv) Deterioration or leakage in air or hydraulic systems: Daily.
- (v) Crane hooks with deformations or cracks. For hooks with cracks or having more than 15 percent in excess of normal throat opening or more than 10° twist from the plane of the unbent hook.
- (vi) Rope reeving for noncompliance with manufacturer's recommendations."

Location: Establishment

Date By Which Violation Must be Abated:

10/31/2007

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Holualoa, HI 96725

Citation 2 Item 3b Type of Violation: Other

29 CFR 1910.180(d)(6) [Refer to chapter 12-73.1, HAR] was violated because:

A National N65 and a Auto truck mounted crane did not have the critical items such as the brakes, crane hooks, and ropes inspected monthly. No records of the inspections were available.

29 CFR 1910.180(d)(6) states "Inspection records. Certification records which include the date of inspection, the signature of the person who performed the inspection and the serial number, or other identifier, of the crane which was inspected shall be made monthly on critical items in use such as brakes, crane hooks, and ropes. This certification record shall be kept readily available."

Location: Establishment

Date By Which Violation Must be Abated:

10/31/2007

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310394655
Inspection Dates: 09/20/2007 - 09/20/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 10/23/2007

Citation and Notification of Penalty

Company Name: County of Hawaii-Department of Water Supply
Inspection Site: 78-6717 Mamalahoa Hwy, Holualoa, HI 96725

Citation 2 Item 3c Type of Violation: **Other**

29 CFR 1910.180(g)(2)(ii) [Refer to chapter 12-73.1, HAR] was violated because:

The wire rope on a Auto DWS-125 truck mounted crane that was idle for a period of a month or more was not given a thorough inspection before use. Also, no certification records were available.

29 CFR 1910.180(g)(2)(ii) states "All rope which has been idle for a period of a month or more due to shutdown or storage of a crane on which it is installed shall be given a thorough inspection before it is used. This inspection shall be for all types of deterioration and shall be performed by an appointed or authorized person whose approval shall be required for further use of the rope. A certification record which includes the date of inspection, the signature of the person who performed the inspection, and an identifier for the rope which was inspected shall be prepared and kept readily available."

Location: Establishment

Date By Which Violation Must be Abated:

10/31/2007

A handwritten signature in cursive script, reading "Darwin L.D. Ching".

DARWIN L.D. CHING
INTERIM DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.